

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

NANCY REXRODE,

Plaintiff,

vs.

**CASE NO. 1:06CV166
(Judge Keeley)**

**MICHAEL ASTRUE,
Commissioner of Social Security,**

Defendant.

ORDER SCHEDULING HEARING

On October 27, 2006, Plaintiff, Nancy Rexrode, (“Plaintiff”), through her counsel Eric M. Francis, filed a Complaint in the Southern District of West Virginia pursuant to 42 U.S.C. § 405(g), to review a denial of Social Security benefits , under the Social Security Act [Docket Entry 1]. On October 27, 2006, the parties filed a Consent to Jurisdiction by a United States Magistrate Judge. The case was thereafter assigned to United States Magistrate Judge Mary E. Stanley. The case was transferred to the Northern District of West Virginia on November 16, 2006.

On January 23, 2007, Plaintiff filed a Motion to Submit New Evidence [Docket Entry 14]. On February 8, 2007, Defendant filed his Answer to the Complaint along with the Administrative Transcript [Docket Entries 16-18]. On January 25, 2007, the undersigned United States Magistrate Judge entered an Order granting Plaintiff’s Motion to Submit New Evidence [Docket Entry 25].

On April 10, 2007, Plaintiff filed her Motion for Judgment on the Pleadings [Docket Entry 21] (incorrectly entitled “Plaintiff’s Reply to Defendant’s Brief in Support of Judgment on the Pleadings”). That same date Plaintiff filed a “Motion to Remand to the Commissioner” [Docket Entry 22]. On June 7, 2007, Defendant filed his Motion for Judgment on the Pleadings [Docket

Entry 26]. On June 15, 2007, Plaintiff filed her “Response to Motion” [Docket Entry 29].¹

The case before this Court involves Plaintiff’s application for benefits submitted February 19, 2004, alleging inability to work as of February 19, 2003 (R. 14). The claim was denied at the Initial and Reconsideration levels (R. 24, 29). Plaintiff requested a hearing, which was held on February 2, 2006, by Administrative Law Judge Mark A. O’Hara (Id.). June 30, 2006, the ALJ issued his Decision denying benefits, finding “The claimant has not been under a ‘disability,’ as defined in the Social Security Act, from February 19, 2003, though the date of this decision. . . .” (R. 21). The Appeals Council denied Plaintiff’s Request for Review on October 12, 2006.

Meanwhile, according to Plaintiff’s Motion and the exhibit attached, Plaintiff filed a subsequent application for benefits on August 2, 2006, while the first was still pending before the Appeals Council. According to Plaintiff’s attached exhibit, entitled “Notice of Award,” on January 12, 2007, the Social Security Administration found that Plaintiff “became disabled under our rules on February 19, 2003,” the same onset date alleged in the case currently before the Court. The Administration awarded Plaintiff benefits starting only as of August 2, 2006, however, because “[by] law, we can pay benefits no earlier than 12 months before the month of filing.”

The substantive issue before this Court is therefore the effect of the January 12, 2007, decision, finding Plaintiff disabled as of February 19, 2003, on the claim currently before the court, alleging disability as of February 19, 2003.

Before making any recommendation, however, the undersigned will provide the parties an opportunity to be heard on the matter. It is therefore **ORDERED** that a hearing is scheduled for **Wednesday, November 14, at 10:30 a.m.**, before the undersigned at the **Clarksburg** point of holding

¹Several Motion were filed and resolved in between these motions, including Motions to Enlarge Time and a Motion for Default Judgment.

court. Counsel shall be prepared to argue the effect of the transfer of the case to this District on the parties' Consent to Jurisdiction by a United States Magistrate Judge as well as the substantive issue—the effect of the subsequent decision awarding benefits on the claim currently before the Court.

The Clerk of the United States Court for the Northern District of West Virginia is directed to provide a true copy of this order to all counsel of record.

DATED: October 24, 2007.

/s *John S. Kaull*

JOHN S. KAULL

UNITED STATES MAGISTRATE JUDGE